

**Introduced by Senator Dunn**

February 22, 2005

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An act to amend Section 1305 of the Penal Code, relating to bail.

LEGISLATIVE COUNSEL'S DIGEST

SB 843, as introduced, Dunn. Bail.

Existing law prescribes the procedure for forfeiture of bail.

This bill would make a technical, nonsubstantive change to those provisions.

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1     SECTION 1. Section 1305 of the Penal Code is amended to  
2     read:  
3     1305. (a) A court shall in open court declare forfeited the  
4     undertaking of bail or the money or property deposited as bail if,  
5     without sufficient excuse, a defendant fails to appear for any of  
6     the following:  
7     (1) Arraignment.  
8     (2) Trial.  
9     (3) Judgment.  
10    (4) Any other occasion prior to the pronouncement of  
11    judgment if the defendant's presence in court is lawfully  
12    required.  
13    (5) To surrender himself or herself in execution of the  
14    judgment after appeal.  
15    However, the court shall not have jurisdiction to declare a  
16    forfeiture and the bail shall be released of all obligations under

1 the bond if the case is dismissed or if no complaint is filed within  
2 15 days from the date of arraignment.

3 (b) If the amount of the bond or money or property deposited  
4 exceeds four hundred dollars (\$400), the clerk of the court shall,  
5 within 30 days of the forfeiture, mail notice of the forfeiture to  
6 the surety or the depositor of money posted instead of bail. At the  
7 same time, the court shall mail a copy of the forfeiture notice to  
8 the bail agent whose name appears on the bond. The clerk shall  
9 also execute a certificate of mailing of the forfeiture notice and  
10 shall place the certificate in the court's file. If the notice of  
11 forfeiture is required to be mailed pursuant to this section, the  
12 180-day period provided for in this section shall be extended by  
13 a period of five days to allow for the mailing.

14 If the surety is an authorized corporate surety, and if the bond  
15 plainly displays the mailing address of the corporate surety and  
16 the bail agent, then notice of the forfeiture shall be mailed to *both*  
17 the surety at that address and to the bail agent, and mailing alone  
18 to the surety or the bail agent shall not constitute compliance  
19 with this section.

20 The surety or depositor shall be released of all obligations  
21 under the bond if any of the following conditions apply:

22 (1) The clerk fails to mail the notice of forfeiture in  
23 accordance with this section within 30 days after the entry of the  
24 forfeiture.

25 (2) The clerk fails to mail the notice of forfeiture to the surety  
26 at the address printed on the bond.

27 (3) The clerk fails to mail a copy of the notice of forfeiture to  
28 the bail agent at the address shown on the bond.

29 (c) (1) If the defendant appears either voluntarily or in  
30 custody after surrender or arrest in court within 180 days of the  
31 date of forfeiture or within 180 days of the date of mailing of the  
32 notice if the notice is required under subdivision (b), the court  
33 shall, on its own motion at the time the defendant first appears in  
34 court on the case in which the forfeiture was entered, direct the  
35 order of forfeiture to be vacated and the bond exonerated. If the  
36 court fails to so act on its own motion, then the surety's or  
37 depositor's obligations under the bond shall be immediately  
38 vacated and the bond exonerated. An order vacating the  
39 forfeiture and exonerating the bond may be made on terms that

1 are just and do not exceed the terms imposed in similar situations  
2 with respect to other forms of pretrial release.

3 (2) If, within the county where the case is located, the  
4 defendant is surrendered to custody by the bail or is arrested in  
5 the underlying case within the 180-day period, and is  
6 subsequently released from custody prior to an appearance in  
7 court, the court shall, on its own motion, direct the order of  
8 forfeiture to be vacated and the bond exonerated. If the court fails  
9 to so act on its own motion, then the surety's or depositor's  
10 obligations under the bond shall be immediately vacated and the  
11 bond exonerated. An order vacating the forfeiture and  
12 exonerating the bond may be made on terms that are just and do  
13 not exceed the terms imposed in similar situations with respect to  
14 other forms of pretrial release.

15 (3) If, outside the county where the case is located, the  
16 defendant is surrendered to custody by the bail or is arrested in  
17 the underlying case within the 180-day period, the court shall  
18 vacate the forfeiture and exonerate the bail.

19 (4) In lieu of exonerating the bond, the court may order the  
20 bail reinstated and the defendant released on the same bond if  
21 both of the following conditions are met:

22 (A) The bail is given prior notice of the reinstatement.

23 (B) The bail has not surrendered the defendant.

24 (d) In the case of a permanent disability, the court shall direct  
25 the order of forfeiture to be vacated and the bail or money or  
26 property deposited as bail exonerated if, within 180 days of the  
27 date of forfeiture or within 180 days of the date of mailing of the  
28 notice if notice is required under subdivision (b), it is made  
29 apparent to the satisfaction of the court that both of the following  
30 conditions are met:

31 (1) The defendant is deceased or otherwise permanently  
32 unable to appear in the court due to illness, insanity, or detention  
33 by military or civil authorities.

34 (2) The absence of the defendant is without the connivance of  
35 the bail.

36 (e) In the case of a temporary disability, the court shall order  
37 the tolling of the 180-day period provided in this section during  
38 the period of temporary disability, provided that it appears to the  
39 satisfaction of the court that the following conditions are met:

1 (1) The defendant is temporarily disabled by reason of illness,  
2 insanity, or detention by military or civil authorities.

3 (2) Based upon the temporary disability, the defendant is  
4 unable to appear in court during the remainder of the 180-day  
5 period.

6 (3) The absence of the defendant is without the connivance of  
7 the bail.

8 The period of the tolling shall be extended for a reasonable  
9 period of time, at the discretion of the court, after the cessation of  
10 the disability to allow for the return of the defendant to the  
11 jurisdiction of the court.

12 (f) In all cases where a defendant is in custody beyond the  
13 jurisdiction of the court that ordered the bail forfeited, and the  
14 prosecuting agency elects not to seek extradition after being  
15 informed of the location of the defendant, the court shall vacate  
16 the forfeiture and exonerate the bond on terms that are just and  
17 do not exceed the terms imposed in similar situations with  
18 respect to other forms of pretrial release.

19 (g) In all cases of forfeiture where a defendant is not in  
20 custody and is beyond the jurisdiction of the state, is temporarily  
21 detained, by the bail agent, in the presence of a local law  
22 enforcement officer of the jurisdiction in which the defendant is  
23 located, and is positively identified by that law enforcement  
24 officer as the wanted defendant in an affidavit signed under  
25 penalty of perjury, and the prosecuting agency elects not to seek  
26 extradition after being informed of the location of the defendant,  
27 the court shall vacate the forfeiture and exonerate the bond on  
28 terms that are just and do not exceed the terms imposed in similar  
29 situations with respect to other forms of pretrial release.

30 (h) As used in this section, “arrest” includes a hold placed on  
31 the defendant in the underlying case while he or she is in custody  
32 on other charges.

33 (i) A motion filed in a timely manner within the 180-day  
34 period may be heard within 30 days of the expiration of the  
35 180-day period. The court may extend the 30-day period upon a  
36 showing of good cause. The motion may be made by the surety  
37 insurer, the bail agent, the surety, or the depositor of money or  
38 property, any of whom may appear in person or through an  
39 attorney. The court, in its discretion, may require that the moving

- 1 party provide 10 days prior notice to the applicable prosecuting
- 2 agency, as a condition precedent to granting the motion.

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